

State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-1412/2

JK:kjf:jf

2005 ASSEMBLY BILL

Regen

1 AN ACT *to renumber* 139.30 (1); *to amend* 134.66 (1) (a), 134.66 (2) (a), 134.66
2 (2) (am), 134.66 (2) (d), 134.66 (2) (e), 139.30 (3), 139.30 (7), 139.30 (10), 139.32
3 (1), 139.32 (5), 139.32 (5m), 139.32 (6), 139.321 (1) (intro.), 139.33 (3), 139.34
4 (3), 139.35 (1), 139.38 (1), 139.38 (2), 139.395, 139.40 (2), 139.75 (12), 254.911
5 (1) and 891.455 (4); and *to create* 134.66 (1) (am), 139.30 (1d), 139.30 (1s),
6 139.30 (2n), 139.30 (2p), 139.30 (4n), 139.30 (8d), 139.345, 139.38 (1m) and
7 254.92 (2m) of the statutes; **relating to:** selling cigarettes to consumers in this
8 state via direct marketing and providing penalties.

Analysis by the Legislative Reference Bureau

Under current law, generally, a person may not sell cigarettes in this state as a distributor, jobber, vending machine operator, or multiple retailer without having a permit from the Department of Revenue (DOR). A "jobber" is any person who acquires cigarettes from manufacturers or distributors, stores the cigarettes, and sells the cigarettes to retailers for resale.

This bill prohibits a direct marketer from selling cigarettes to consumers in this state unless the direct marketer fulfills certain requirements. The bill defines "direct marketing" as publishing or making accessible an offer for the sale of cigarettes ~~or tobacco products~~ to consumers in this state, or selling cigarettes, using any means by which the consumer is not physically present on a premise that sells cigarettes.

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~~Permits issued to direct marketers expire each year on December 31.~~

Under the bill, a direct marketer must certify to DOR that the person will register with debit and credit card companies; that the invoices for all shipments of cigarettes ~~or tobacco products~~ will bear the direct marketer's name and address; and that the direct marketer will provide DOR any information that DOR considers necessary. The direct marketer may not sell any cigarettes unless the sales tax, use tax, or cigarette tax, as appropriate, has been paid on the sale of the cigarettes.

This bill also requires a direct marketer who sells cigarettes to consumers in this state to verify the consumer's name and address and that the consumer is at least 18 years of age. The bill also requires that any person who delivers such cigarettes to consumers in this state verify that the person who purchased the cigarettes, and who receives the delivery, is at least 18 years of age.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 134.66 (1) (a) of the statutes is amended to read:

2 134.66 (1) (a) "Cigarette" has the meaning given in s. 139.30 (1) (1m).

3 **SECTION 2.** 134.66 (1) (am) of the statutes is created to read:

4 134.66 (1) (am) "Direct marketer" has the meaning given in s. 139.30 (2n).

5 **SECTION 3.** 134.66 (2) (a) of the statutes is amended to read:

6 134.66 (2) (a) No retailer, direct marketer, manufacturer, distributor, jobber or
7 subjobber, no agent, employee or independent contractor of a retailer, direct
8 marketer, manufacturer, distributor, jobber or subjobber and no agent or employee
9 of an independent contractor may sell or provide for nominal or no consideration
10 cigarettes or tobacco products to any person under the age of 18, except as provided
11 in s. 254.92 (2) (a). A vending machine operator is not liable under this paragraph
12 for the purchase of cigarettes or tobacco products from his or her vending machine

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1 by a person under the age of 18 if the vending machine operator was unaware of the
2 purchase.

3 **SECTION 4.** 134.66 (2) (am) of the statutes is amended to read:

4 134.66 (2) (am) No retailer, direct marketer, manufacturer, distributor, jobber,
5 subjobber, no agent, employee or independent contractor of a retailer, direct
6 marketer, manufacturer, distributor, jobber or subjobber and no agent or employee
7 of an independent contractor may provide for nominal or no consideration cigarettes
8 or tobacco products to any person except in a place where no person younger than 18
9 years of age is present or permitted to enter unless the person who is younger than
10 18 years of age is accompanied by his or her parent or guardian or by his or her spouse
11 who has attained the age of 18 years.

12 **SECTION 5.** 134.66 (2) (d) of the statutes is amended to read:

13 134.66 (2) (d) No manufacturer, direct marketer, distributor, jobber, subjobber
14 or retailer, or their employees or agents, may provide cigarettes or tobacco products
15 for nominal or no consideration to any person under the age of 18.

16 **SECTION 6.** 134.66 (2) (e) of the statutes is amended to read:

17 134.66 (2) (e) No retailer or direct marketer may sell cigarettes in a form other
18 than as a package or container on which a stamp is affixed under s. 139.32 (1).

19 **SECTION 7.** 139.30 (1) of the statutes is renumbered 139.30 (1m).

20 **SECTION 8.** 139.30 (1d) of the statutes is created to read:

21 139.30 (1d) “Bonded direct marketer” means any person who acquires
22 unstamped cigarettes from the manufacturer thereof, affixes stamps to the packages
23 or other containers, stores them and sells them by direct marketing to consumers for
24 their own personal use and who may also acquire stamped cigarettes from
25 manufacturers or distributors for such sales.

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SECTION 9

1 **SECTION 9.** 139.30 (1s) of the statutes is created to read:

2 139.30 (1s) "Consumer" means any individual who receives cigarettes for his
3 or her personal use or consumption or any individual who has title to or possession
4 of cigarettes for any purpose other than for sale or resale.

5 **SECTION 10.** 139.30 (2n) of the statutes is created to read:

6 139.30 (2n) "Direct marketer" means a bonded direct marketer or a nonbonded
7 direct marketer.

8 **SECTION 11.** 139.30 (2p) of the statutes is created to read:

9 139.30 (2p) "Direct marketing" means publishing or making accessible an offer
10 for the sale of cigarettes to consumers in this state, or selling cigarettes to consumers
11 in this state, using any means by which the consumer is not physically present at the
12 time of sale on a premise that sells cigarettes.

13 **SECTION 12.** 139.30 (3) of the statutes is amended to read:

14 139.30 (3) "Distributor" means any person who acquires unstamped cigarettes
15 from the manufacturer thereof, affixes stamps to the packages or other containers,
16 stores them and sells them to other permittees or to retailers for resale ~~or~~ and who
17 acquires may acquire stamped cigarettes from another permittee manufacturers or
18 distributors for such sales.

19 **SECTION 13.** 139.30 (4n) of the statutes is created to read:

20 139.30 (4n) "Government issued identification" includes a valid driver's
21 license, state identification card, passport, or military identification.

22 **SECTION 14.** 139.30 (7) of the statutes is amended to read:

23 139.30 (7) "Manufacturer" means any person who directly manufactures
24 cigarettes for the purpose of sale, including the authorized agent of a person who
25 directly manufactures cigarettes for the purpose of sale.

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1 **SECTION 15.** 139.30 (8d) of the statutes is created to read:

2 139.30 (8d) “Nonbonded direct marketer” means any person who acquires
3 stamped cigarettes from the manufacturers or distributors, stores them, and sells
4 them by direct marketing to consumers for their own personal use.

5 **SECTION 16.** 139.30 (10) of the statutes is amended to read:

6 139.30 (10) “Retailer” ~~means any person who sells, exposes for sale or possesses~~
7 ~~with intent to sell to consumers any cigarettes~~ has the meaning given in s. 134.66 (1)
8 (g).

9 **SECTION 17.** 139.32 (1) of the statutes is amended to read:

10 139.32 (1) The tax imposed by s. 139.31 (1) shall be paid. To evidence the
11 payment, the department shall provide stamps. A person who has paid the tax shall
12 affix stamps of the proper denomination to each package in which cigarettes are
13 packed, prior to the first sale within this state. First sale does not include a sale by
14 a manufacturer to a distributor or to a bonded direct marketer or by a distributor to
15 a permittee who has obtained department approval as provided for in s. 139.321 (1)
16 (a) 2. The tax shall be paid only once on each package or container.

17 **SECTION 18.** 139.32 (5) of the statutes is amended to read:

18 139.32 (5) Manufacturers, bonded direct marketers, and distributors ~~having~~
19 ~~a permit from the secretary who are authorized by the department to purchase tax~~
20 stamps shall receive a discount of 1.6% of the tax paid on stamp purchases.

21 **SECTION 19.** 139.32 (5m) of the statutes is amended to read:

22 139.32 (5m) Distributors, bonded direct marketers, and manufacturers shall
23 pay to the department the cost of printing and shipping those stamps.

24 **SECTION 20.** 139.32 (6) of the statutes is amended to read:

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SECTION 20

1 139.32 (6) Manufacturers, bonded direct marketers, and distributors having
2 a permit from the secretary who are authorized by the department to purchase tax
3 stamps may purchase stamps on credit. The secretary may require manufacturers,
4 bonded direct marketers, and distributors who purchase stamps on credit to file
5 under the conditions prescribed by the secretary by rule.

6 **SECTION 21.** 139.321 (1) (intro.) of the statutes is amended to read:

7 139.321 (1) (intro.) It is unlawful for any person to possess ~~in excess of 400~~
8 cigarettes unless the required stamps are properly affixed as provided in ss. 139.32
9 (1) and 139.33 (4).

10 **SECTION 22.** 139.33 (3) of the statutes is amended to read:

11 139.33 (3) No person other than a member of the armed forces, as specified in
12 this subsection, a licensed distributor, or a bonded direct marketer who is authorized
13 by the department to purchase and affix tax stamps may import into this state ~~more~~
14 ~~than 400~~ cigarettes on which the excise tax imposed by s. 139.31 has not been paid
15 and the container of which does not bear proper stamps. Within 15 days, any such
16 person importing cigarettes shall file a declaration of such cigarettes imported and
17 shall remit therewith the tax on such cigarettes imposed by this section. Members
18 of the armed forces shall not be required to report or pay the tax on cigarettes in their
19 possession if such cigarettes are issued to them by the U.S. government or any of its
20 subdivisions or were purchased in any armed forces post exchange or service store
21 for their personal use or consumption. If the use tax imposed by this section is not
22 paid when due, it shall become delinquent and the person liable for it shall pay, in
23 addition, a penalty of \$25 for each 200 cigarettes. Interest on the delinquent tax and
24 penalty shall accrue at the rate of 1.5% per month or each fraction of a month from
25 the date the tax became due until paid.

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1 **SECTION 23.** 139.34 (3) of the statutes is amended to read:

2 139.34 (3) No distributor or bonded direct marketer may affix stamps to
3 cigarette packages, as provided in s. 139.32, unless the distributor or bonded direct
4 marketer certifies to the department, in a manner prescribed by the department,
5 that the distributor or bonded direct marketer purchases cigarettes directly from a
6 manufacturer.

7 **SECTION 24.** 139.345 of the statutes is created to read:

8 **139.345 Direct marketing.** (1) (a) (intro.) No person may sell cigarettes to
9 consumers in this state as a direct marketer or solicit sales of cigarettes to consumers
10 in this state by direct marketing unless the person submits to the department the
11 person's name, trade name, address of the person's principal place of business, phone
12 number, e-mail address, and Web site address.

13 (b) No person may sell cigarettes as described under this section unless the
14 person certifies to the department, in the manner prescribed by the department, that
15 the person shall acquire stamped cigarettes from a licensed distributor or
16 unstamped cigarettes from the manufacturer thereof, pay the tax imposed under this
17 subchapter on all unstamped cigarettes and affix stamps to the cigarette packages
18 or containers as provided under s. 139.32 (1), store such packages or containers, and
19 sell only such packages or containers to consumers in this state by direct marketing;
20 or acquire cigarettes from a distributor, to the packages or containers of which
21 stamps have been affixed as provided under s. 139.32 (1), and sell only such packages
22 or containers to consumers in this state by direct marketing.

23 (d) No person may sell cigarettes as described in this section unless the person
24 certifies to the department, in the manner prescribed by the department, that the
25 person shall register with credit card and debit card companies; that the invoices and

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SECTION 24

1 all means of solicitation for all shipments of cigarette sales from the person shall bear
2 the person's name and address; and that the person shall provide the department any
3 information the department considers necessary to administer this section.

4 (2) (a) No person may sell cigarettes to consumers in this state by direct
5 marketing unless the tax imposed under s. 139.31 (1) is paid on such cigarettes and
6 stamps are affixed to the cigarette packages or containers as provided under s.
7 139.32.

8 (b) No person may sell cigarettes to consumers in this state by direct marketing
9 unless the tax imposed under s. 77.52 or 77.53 is paid on the sale of such cigarettes.

10 (3) No person may sell cigarettes to consumers in this state, or solicit sales of
11 cigarettes to consumers in this state by direct marketing unless the person does all
12 of the following:

13 (a) Verifies the consumer's name and address and that the consumer is at least
14 18 years of age by any of the following methods:

15 1. The person uses a database, approved by the department, that includes
16 information based on public records.

17 2. The person receives from the consumer, at the time of purchase, a notarized
18 copy of a government issued identification.

19 3. The person uses a mechanism, other than a mechanism specified under subd.
20 1. or 2., that is approved by the department.

21 (b) Obtains from the consumer, at the time of purchase, a statement signed by
22 the consumer that confirms all of the following:

23 1. The consumer's name, address, and birth date.

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1 2. That the consumer understands that no person who is under 18 years of age
2 may purchase or possess cigarettes or falsely represent his or her age for the purpose
3 of receiving cigarettes, as provided under s. 254.92.

4 3. That the consumer understands that any person who, for the purpose of
5 obtaining credit, goods, or services, intentionally uses, attempts to use, or possesses
6 with intent to use, any personal identifying information or personal identification
7 document of an individual, including a deceased individual, without the
8 authorization or consent of the individual and by representing that he or she is the
9 individual, that he or she is acting with the authorization or consent of the
10 individual, or that the information or document belongs to him or her, is guilty of a
11 Class H felony, as provided under s. 943.201.

12 (4) Any person who makes a sale of cigarettes as the result of an advertisement
13 on the Internet shall, at the time of purchase, obtain the purchaser's electronic mail
14 address and shall receive payment for the sale by credit card, debit card, or check
15 prior to shipping.

16 (5) The invoice for any shipment of cigarettes sold to consumers in this state
17 by direct marketing shall specify the name and address of the seller and any valid
18 permit issued under s. 139.34 that is held by the seller.

19 (6) All packages of cigarettes shipped to consumers in this state shall be clearly
20 labelled "CIGARETTES" on all sides of the outside of such packages.

21 (7) (a) No person may deliver a package of cigarettes sold by direct marketing
22 to a consumer in this state unless the person making the delivery receives a
23 government issued identification card from the person receiving the package and
24 verifies that the person receiving the package is at least 18 years of age. If the person
25 receiving the package is not the person to whom the package is addressed, the person

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1 delivering the package shall have the person receiving the package sign a statement
2 that affirms that the person to whom the package is addressed is at least 18 years
3 of age.

4 (b) No person may deliver a package of cigarettes to a consumer in this state
5 unless the seller of the cigarettes provides proof to the person making the delivery
6 that the seller has complied with all requirements under this subchapter. A seller
7 shall have no course of action against any person who refuses to deliver cigarettes
8 as provided under this subdivision.

9 (8) This section does not apply to any retailer or wholesaler who sells cigarettes
10 to consumers in this state and who holds a valid seller's permit under this subchapter
11 or subch. III of ch. 77.

12 **SECTION 25.** 139.35 (1) of the statutes is amended to read:

13 139.35 (1) TRANSFERS. No person may give, sell or lend any stamps to another
14 and no person may accept, purchase or borrow any stamps from another. All sales
15 and transfers of stamps may be made only by the secretary to permit holding
16 manufacturers ^{restore} ~~and~~ distributors, ^{to} ~~and bonded direct marketers who are authorized~~
17 by the department to purchase and affix tax stamps.

18 **SECTION 26.** 139.38 (1) of the statutes is amended to read:

19 139.38 (1) Every manufacturer located out of the state shall keep records of all
20 sales of cigarettes shipped into this state. Every manufacturer located in the state
21 shall keep records of production, sales and withdrawals of cigarettes. Every
22 distributor and direct marketer shall keep records of purchases and sales of
23 cigarettes. Every manufacturer, bonded direct marketer, and distributor ~~holding a~~
24 ~~permit from the secretary with the right~~ who is authorized by the department to
25 purchase and apply stamps shall also keep records of purchases and disposition of

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SECTION 26

1 stamps. Every jobber, multiple retailer, and vending machine operator shall keep
2 records of all purchases and disposition of cigarettes. Every warehouse operator
3 shall keep records of receipts and withdrawals of cigarettes. All such records shall
4 be accurate and complete and be kept in a manner prescribed by the secretary. These
5 records shall be preserved on the premises described in the permit or license in such
6 a manner as to ensure permanency and accessibility for inspection at reasonable
7 hours by authorized personnel of the department.

8 **SECTION 27.** 139.38 (1m) of the statutes is created to read:

9 139.38 (1m) Records of purchases and sales of cigarettes under sub. (1) that
10 are kept by direct marketers shall indicate, for each shipment of cigarettes into this
11 state in the month preceding the report under sub. (2), the invoice date and number;
12 the quantity of cigarettes shipped; the brand name of the cigarettes shipped; the
13 manufacturer of the cigarettes shipped and the point of origin; the purchaser's name,
14 address, and birth date; the name of the person to whom the cigarettes were shipped;
15 the address to which the cigarettes were shipped; and any other information the
16 department requires.

17 **SECTION 28.** 139.38 (2) of the statutes is amended to read:

18 139.38 (2) (a) Except as provided in par. (b), every permittee manufacturer,
19 distributor, jobber, and direct marketer shall render a true and correct invoice of
20 every sale of cigarettes ~~at wholesale~~ and every permittee shall on or before the 15th
21 day of each calendar month file a verified report of all cigarettes purchased, sold,
22 received, warehoused or withdrawn during the preceding calendar month.

23 (b) The department may allow any jobber, multiple retailer, nonbonded direct
24 marketer, or vending machine operator permittee who does not sell cigarettes, except
25 for those on which the tax under this chapter is paid, to file a quarterly report. The

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1 quarterly report shall be filed on or before the 15th day of the next month following
2 the close of each calendar quarter. The report shall specify the number of cigarettes
3 purchased and sold during the preceding calendar quarter.

4 **SECTION 29.** 139.395 of the statutes is amended to read:

5 **139.395 Theft of tax moneys.** All cigarette tax moneys received by a
6 distributor, bonded direct marketer, or manufacturer for the sale of cigarettes on
7 which the tax under this subchapter has become due and has not been paid are trust
8 funds in the hands of the distributor, bonded direct marketer, or manufacturer and
9 are the property of this state. Any distributor, bonded direct marketer, or
10 manufacturer who fraudulently withholds, appropriates or otherwise uses cigarette
11 tax moneys that are the property of this state is guilty of theft under s. 943.20 (1),
12 whether or not the distributor, bonded direct marketer, or manufacturer has or
13 claims to have an interest in those moneys.

14 **SECTION 30.** 139.40 (2) of the statutes is amended to read:

15 ~~139.40 (2) If cigarettes which do not bear the proper tax stamps or on which~~
16 ~~the tax has not been paid Cigarettes that are so seized they as provided under sub.~~
17 ~~(1) may be given to law enforcement officers to use in criminal investigations or sold~~
18 ~~to qualified buyers by the secretary, without notice. If the cigarettes are sold, after~~
19 ~~deducting the costs of the sale and the keeping of storing the property, the proceeds~~
20 ~~of the sale shall be paid into the state treasury. If the secretary finds that such~~
21 ~~cigarettes may deteriorate or become unfit for use in criminal investigations or for~~
22 ~~sale or that those uses would otherwise be impractical, the secretary may order them~~
23 ~~destroyed or give them to a charitable or penal institution for free distribution to~~
24 ~~patients or inmates.~~

25 **SECTION 31.** 139.75 (12) of the statutes is amended to read:

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1 139.75 (12) “Tobacco products” means cigars; cheroots; stogies; periques;
2 granulated, plug cut, crimp cut, ready-rubbed and other smoking tobacco; snuff;
3 snuff flour; cavendish; plug and twist tobacco; fine cut and other chewing tobaccos;
4 shorts; refuse scraps, clippings, cuttings and sweepings of tobacco and other kinds
5 and forms of tobacco prepared in such manner as to be suitable for chewing or
6 smoking in a pipe or otherwise, or both for chewing and smoking; but “tobacco
7 products” does not include cigarettes, as defined under s. 139.30 ~~(1)~~ (1m).

8 **SECTION 32.** 254.911 (1) of the statutes is amended to read:

9 254.911 (1) “Cigarette” has the meaning given in s. 139.30 ~~(1)~~ (1m).

10 **SECTION 33.** 254.92 (2m) of the statutes is created to read:

11 254.92 (2m) No person may purchase cigarettes on behalf of, or to provide to,
12 any person who is under 18 years of age. Any person who violates this subsection
13 may be:

14 (a) Required to forfeit not more than \$500 if the person has not committed a
15 previous violation within 30 months of the violation.

16 (b) Fined not more than \$500 or imprisoned for not more than 30 days or both
17 if the person has committed a previous violation within 30 months of the violation.

18 (c) Fined not more than \$1,000 or imprisoned for not more than 90 days or both
19 if the person has committed 2 previous violations within 30 months of the violation.

20 (d) Fined not more than \$10,000 or imprisoned for not more than 9 months or
21 both if the person has committed 3 or more previous violations within 30 months of
22 the violation.

23 **SECTION 34.** 891.455 (4) of the statutes is amended to read:

24 891.455 (4) The presumption under sub. (2) for cancers caused by smoking or
25 tobacco product use shall not apply to any municipal fire fighter who smokes

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1 cigarettes, as defined in s. 139.30 ~~(1)~~ (1m), or who uses a tobacco product, as defined
2 in s. 139.75 (12), after January 1, 2001.

3 (END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1412/2dn
JK:kjf:jf

April 19, 2005

Representative Fitzgerald:

Please review this draft carefully to ensure that it is consistent with your intent. Please note that, as drafted, the bill will take effect on the day after publication. Because the bill contains complex changes to enforcement and administration of cigarette sales in this state, you may want to delay the effective date to give DOR, and direct marketers, time to prepare.

Joseph T. Kreye
Senior Legislative Attorney
Phone: (608) 266-2263
E-mail: joseph.kreye@legis.state.wi.us

Kreye, Joseph

From: Kreye, Joseph
Sent: Thursday, April 28, 2005 12:11 PM
To: Pleva, Brian
Cc: 'alison.prange@cancer.org'
Subject: RE: Change to LRB-1412/2

Brian,

In addition to the authority already granted under s. 139.26, I would add the following: " The attorney general may take any action necessary to enforce s. 139.345."

I would also create a new subsection under s. 100.20 (Methods of competition and trade practices) which would read:

"100.20 (1n) It is an unfair method of competition or an unfair trade practice for any person to sell cigarettes to consumers in this state in violation of s. 139.345."

Please send the jacket back for redrafting.

Joe

Joseph T. Kreye
Senior Legislative Attorney
Legislative Reference Bureau
(608) 266-2263

-----Original Message-----

From: Pleva, Brian
Sent: Thursday, April 28, 2005 11:20 AM
To: Kreye, Joseph
Cc: 'alison.prange@cancer.org'
Subject: Change to LRB-1412/2

Joe, this will be the final change we're requesting on LRB-1412. Please incorporate the language from Item #8 in the attachment (but, again, apply it only to the sales of cigarettes--not all tobacco products).

Thank you! If you have any questions, please contact me.

<< File: Scan001.PDF >>

Brian Pleva
Office of Rep. Jeff Fitzgerald
Assistant Majority Leader
(608) 266-2540

5. Unlawful ordering. It is unlawful to submit ordering information for tobacco products by delivery sale under subsection 2, paragraph A in the name of another person. A person who violates this subsection commits a civil violation for which a fine of not more than \$10,000 may be adjudged.

6. Rulemaking. The department and the Department of Administrative and Financial Services shall adopt rules to implement this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

7. Forfeiture. Any tobacco product sold or attempted to be sold in a delivery sale that does not meet the requirements of this section is deemed to be contraband and is subject to forfeiture in the same manner as and in accordance with the provisions of Title 36, section 4372-A.

8. Enforcement. The Attorney General may bring an action to enforce this section in District Court or Superior Court and may seek injunctive relief, including a preliminary or final injunction, and fines, penalties and equitable relief and may seek to prevent or restrain actions in violation of this section by any person or any person controlling such person. In addition, a violation of this section is a violation of the Maine Unfair Trade Practices Act.

§1555-D. Illegal delivery of tobacco products

A person may not knowingly transport or cause to be delivered to a person in this State a tobacco product purchased from a person who is not licensed as a tobacco retailer in this State, except that this provision does not apply to the transportation or delivery of tobacco products to a licensed tobacco distributor or tobacco retailer. A person is deemed to know that a package contains a tobacco product if the package is marked in accordance with the requirements of section 1555-C, subsection 3, paragraph B or if the person receives the package from a person listed as an unlicensed tobacco retailer by the Attorney General under this section.

1. Lists. The Attorney General shall maintain lists of licensed tobacco retailers and known unlicensed tobacco retailers. The Attorney General shall provide to a delivery service lists of licensed tobacco retailers and known unlicensed tobacco retailers. The list of known unlicensed tobacco retailers is confidential. A delivery service that receives a list of known unlicensed tobacco retailers shall maintain the confidentiality of the list.

2. Penalty. The following penalties apply for violation of this section.

A. A person who violates this section commits a civil violation for which a fine of not less than \$50 nor more than \$1500 may be adjudged for each violation. A fine imposed under this paragraph may not be suspended.

B. An employer of a person who, while working and within the scope of that person's employment, violates this section commits a civil violation for which a fine of not less than \$50 nor more than \$1,500 may be adjudged for each violation. A fine imposed under this paragraph may not be suspended.

3. Enforcement. The Attorney General may bring an action to enforce this section in District Court or Superior Court and may seek injunctive relief, including a preliminary or final injunction, and fines, penalties and equitable relief and may seek to prevent or restrain actions in violation of this section by any person or any person controlling such person. In addition, a violation of this section is a violation of the Maine Unfair Trade Practices Act.

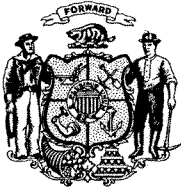
4. Affirmative defense. It is an affirmative defense to a prosecution under this section that a person who transported tobacco products or caused tobacco products to be delivered reasonably relied on licensing information provided by the Attorney General under this section.

5. Rulemaking. The department shall adopt rules to implement this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

6. Forfeiture. Any tobacco product sold or attempted to be sold in a delivery sale that does not meet the requirements of this section is deemed to be contraband and is subject to forfeiture in the same manner as and in accordance with the provisions of Title 36, section 4372-A.

Effective September 13, 2003, unless otherwise indicated.

Cathy Peters
Policy Analyst
American Cancer Society, Midwest Division
262.312.4356
262.523.5533 Fax
<http://www.cancer.org>



State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-1412/2

JK:kjf/jf

2005 ASSEMBLY BILL

in 4-28-05

Regen

Today

1 AN ACT *to renumber* 139.30 (1); *to amend* 134.66 (1) (a), 134.66 (2) (a), 134.66
2 (2) (am), 134.66 (2) (d), 134.66 (2) (e), 139.30 (10), 139.32 (1), 139.32 (5), 139.32
3 (5m), 139.32 (6), 139.321 (1) (intro.), 139.33 (3), 139.34 (3), 139.35 (1), 139.38
4 (1), 139.38 (2), 139.395, 139.75 (12), 254.911 (1) and 891.455 (4); and *to create*
5 134.66 (1) (am), 139.30 (1d), 139.30 (1s), 139.30 (2n), 139.30 (2p), 139.30 (4n),
6 139.30 (8d), 139.345, 139.38 (1m) and 254.92 (2m) of the statutes; **relating to:**
7 selling cigarettes to consumers in this state via direct marketing and providing
8 penalties.

Analysis by the Legislative Reference Bureau

Under current law, generally, a person may not sell cigarettes in this state as a distributor, jobber, vending machine operator, or multiple retailer without having a permit from the Department of Revenue (DOR). A "jobber" is any person who acquires cigarettes from manufacturers or distributors, stores the cigarettes, and sells the cigarettes to retailers for resale.

This bill prohibits a direct marketer from selling cigarettes to consumers in this state unless the direct marketer fulfills certain requirements. The bill defines "direct marketing" as publishing or making accessible an offer for the sale of cigarettes to consumers in this state, or selling cigarettes, using any means by which the consumer is not physically present on a premise that sells cigarettes.

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Under the bill, a direct marketer must certify to DOR that the person will register with debit and credit card companies; that the invoices for all shipments of cigarettes will bear the direct marketer's name and address; and that the direct marketer will provide DOR any information that DOR considers necessary. The direct marketer may not sell any cigarettes unless the sales tax, use tax, or cigarette tax, as appropriate, has been paid on the sale of the cigarettes.

This bill also requires a direct marketer who sells cigarettes to consumers in this state to verify the consumer's name and address and that the consumer is at least 18 years of age. The bill also requires that any person who delivers such cigarettes to consumers in this state verify that the person who purchased the cigarettes, and who receives the delivery, is at least 18 years of age.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 134.66 (1) (a) of the statutes is amended to read:

2 134.66 (1) (a) "Cigarette" has the meaning given in s. 139.30 (1) (1m).

3 **SECTION 2.** 134.66 (1) (am) of the statutes is created to read:

4 134.66 (1) (am) "Direct marketer" has the meaning given in s. 139.30 (2n).

5 **SECTION 3.** 134.66 (2) (a) of the statutes is amended to read:

6 134.66 (2) (a) No retailer, direct marketer, manufacturer, distributor, jobber or
7 subjobber, no agent, employee or independent contractor of a retailer, direct
8 marketer, manufacturer, distributor, jobber or subjobber and no agent or employee
9 of an independent contractor may sell or provide for nominal or no consideration
10 cigarettes or tobacco products to any person under the age of 18, except as provided
11 in s. 254.92 (2) (a). A vending machine operator is not liable under this paragraph
12 for the purchase of cigarettes or tobacco products from his or her vending machine

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1 by a person under the age of 18 if the vending machine operator was unaware of the
2 purchase.

3 **SECTION 4.** 134.66 (2) (am) of the statutes is amended to read:

4 134.66 (2) (am) No retailer, direct marketer, manufacturer, distributor, jobber,
5 subjobber, no agent, employee or independent contractor of a retailer, direct
6 marketer, manufacturer, distributor, jobber or subjobber and no agent or employee
7 of an independent contractor may provide for nominal or no consideration cigarettes
8 or tobacco products to any person except in a place where no person younger than 18
9 years of age is present or permitted to enter unless the person who is younger than
10 18 years of age is accompanied by his or her parent or guardian or by his or her spouse
11 who has attained the age of 18 years.

12 **SECTION 5.** 134.66 (2) (d) of the statutes is amended to read:

13 134.66 (2) (d) No manufacturer, direct marketer, distributor, jobber, subjobber
14 or retailer, or their employees or agents, may provide cigarettes or tobacco products
15 for nominal or no consideration to any person under the age of 18.

16 **SECTION 6.** 134.66 (2) (e) of the statutes is amended to read:

17 134.66 (2) (e) No retailer or direct marketer may sell cigarettes in a form other
18 than as a package or container on which a stamp is affixed under s. 139.32 (1).

19 **SECTION 7.** 139.30 (1) of the statutes is renumbered 139.30 (1m).

20 **SECTION 8.** 139.30 (1d) of the statutes is created to read:

21 139.30 (1d) “Bonded direct marketer” means any person who acquires
22 unstamped cigarettes from the manufacturer thereof, affixes stamps to the packages
23 or other containers, stores them and sells them by direct marketing to consumers for
24 their own personal use and who may also acquire stamped cigarettes from
25 manufacturers or distributors for such sales.

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SECTION 9

1 **SECTION 9.** 139.30 (1s) of the statutes is created to read:

2 139.30 (1s) "Consumer" means any individual who receives cigarettes for his
3 or her personal use or consumption or any individual who has title to or possession
4 of cigarettes for any purpose other than for sale or resale.

5 **SECTION 10.** 139.30 (2n) of the statutes is created to read:

6 139.30 (2n) "Direct marketer" means a bonded direct marketer or a nonbonded
7 direct marketer.

8 **SECTION 11.** 139.30 (2p) of the statutes is created to read:

9 139.30 (2p) "Direct marketing" means publishing or making accessible an offer
10 for the sale of cigarettes to consumers in this state, or selling cigarettes to consumers
11 in this state, using any means by which the consumer is not physically present at the
12 time of sale on a premise that sells cigarettes.

13 **SECTION 12.** 139.30 (4n) of the statutes is created to read:

14 139.30 (4n) "Government issued identification" includes a valid driver's
15 license, state identification card, passport, or military identification.

16 **SECTION 13.** 139.30 (8d) of the statutes is created to read:

17 139.30 (8d) "Nonbonded direct marketer" means any person who acquires
18 stamped cigarettes from the manufacturers or distributors, stores them, and sells
19 them by direct marketing to consumers for their own personal use.

20 **SECTION 14.** 139.30 (10) of the statutes is amended to read:

21 139.30 (10) "Retailer" ~~means any person who sells, exposes for sale or possesses~~
22 ~~with intent to sell to consumers any cigarettes~~ has the meaning given in s. 134.66 (1)
23 (g).

24 **SECTION 15.** 139.32 (1) of the statutes is amended to read:

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1 139.32 (1) The tax imposed by s. 139.31 (1) shall be paid. To evidence the
2 payment, the department shall provide stamps. A person who has paid the tax shall
3 affix stamps of the proper denomination to each package in which cigarettes are
4 packed, prior to the first sale within this state. First sale does not include a sale by
5 a manufacturer to a distributor or to a bonded direct marketer or by a distributor to
6 a permittee who has obtained department approval as provided for in s. 139.321 (1)
7 (a) 2. The tax shall be paid only once on each package or container.

8 **SECTION 16.** 139.32 (5) of the statutes is amended to read:

9 139.32 (5) Manufacturers, bonded direct marketers, and distributors ~~having~~
10 ~~a permit from the secretary who are authorized by the department to purchase tax~~
11 stamps shall receive a discount of 1.6% of the tax paid on stamp purchases.

12 **SECTION 17.** 139.32 (5m) of the statutes is amended to read:

13 139.32 (5m) Distributors, bonded direct marketers, and manufacturers shall
14 pay to the department the cost of printing and shipping those stamps.

15 **SECTION 18.** 139.32 (6) of the statutes is amended to read:

16 139.32 (6) Manufacturers, bonded direct marketers, and distributors ~~having~~
17 ~~a permit from the secretary who are authorized by the department to purchase tax~~
18 stamps may purchase stamps on credit. The secretary may require manufacturers,
19 bonded direct marketers, and distributors who purchase stamps on credit to file
20 under the conditions prescribed by the secretary by rule.

21 **SECTION 19.** 139.321 (1) (intro.) of the statutes is amended to read:

22 139.321 (1) (intro.) It is unlawful for any person to possess ~~in excess of~~ 400
23 cigarettes unless the required stamps are properly affixed as provided in ss. 139.32
24 (1) and 139.33 (4).

25 **SECTION 20.** 139.33 (3) of the statutes is amended to read:

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SECTION 20

1 139.33 (3) No person other than a member of the armed forces, as specified in
2 this subsection, a licensed distributor, or a bonded direct marketer who is authorized
3 by the department to purchase and affix tax stamps may import into this state more
4 than 400 cigarettes on which the excise tax imposed by s. 139.31 has not been paid
5 and the container of which does not bear proper stamps. Within 15 days, any such
6 person importing cigarettes shall file a declaration of such cigarettes imported and
7 shall remit therewith the tax on such cigarettes imposed by this section. Members
8 of the armed forces shall not be required to report or pay the tax on cigarettes in their
9 possession if such cigarettes are issued to them by the U.S. government or any of its
10 subdivisions or were purchased in any armed forces post exchange or service store
11 for their personal use or consumption. If the use tax imposed by this section is not
12 paid when due, it shall become delinquent and the person liable for it shall pay, in
13 addition, a penalty of \$25 for each 200 cigarettes. Interest on the delinquent tax and
14 penalty shall accrue at the rate of 1.5% per month or each fraction of a month from
15 the date the tax became due until paid.

16 **SECTION 21.** 139.34 (3) of the statutes is amended to read:

17 139.34 (3) No distributor or bonded direct marketer may affix stamps to
18 cigarette packages, as provided in s. 139.32, unless the distributor or bonded direct
19 marketer certifies to the department, in a manner prescribed by the department,
20 that the distributor or bonded direct marketer purchases cigarettes directly from a
21 manufacturer.

22 **SECTION 22.** 139.345 of the statutes is created to read:

23 **139.345 Direct marketing.** (1) (a) (intro.) No person may sell cigarettes to
24 consumers in this state as a direct marketer or solicit sales of cigarettes to consumers
25 in this state by direct marketing unless the person submits to the department the

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1 person's name, trade name, address of the person's principal place of business, phone
2 number, e-mail address, and Web site address.

3 (b) No person may sell cigarettes as described under this section unless the
4 person certifies to the department, in the manner prescribed by the department, that
5 the person shall acquire stamped cigarettes from a licensed distributor or
6 unstamped cigarettes from the manufacturer thereof, pay the tax imposed under this
7 subchapter on all unstamped cigarettes and affix stamps to the cigarette packages
8 or containers as provided under s. 139.32 (1), store such packages or containers, and
9 sell only such packages or containers to consumers in this state by direct marketing;
10 or acquire cigarettes from a distributor, to the packages or containers of which
11 stamps have been affixed as provided under s. 139.32 (1), and sell only such packages
12 or containers to consumers in this state by direct marketing.

13 (d) No person may sell cigarettes as described in this section unless the person
14 certifies to the department, in the manner prescribed by the department, that the
15 person shall register with credit card and debit card companies; that the invoices and
16 all means of solicitation for all shipments of cigarette sales from the person shall bear
17 the person's name and address; and that the person shall provide the department any
18 information the department considers necessary to administer this section.

19 (2) No person may sell cigarettes to consumers in this state by direct marketing
20 unless the tax imposed under s. 77.52 or 77.53 is paid on the sale of such cigarettes.

21 (3) No person may sell cigarettes to consumers in this state, or solicit sales of
22 cigarettes to consumers in this state by direct marketing unless the person does all
23 of the following:

24 (a) Verifies the consumer's name and address and that the consumer is at least
25 18 years of age by any of the following methods:

ASSEMBLY BILL**SECTION 22**

1 1. The person uses a database, approved by the department, that includes
2 information based on public records.

3 2. The person receives from the consumer, at the time of purchase, a notarized
4 copy of a government issued identification.

5 3. The person uses a mechanism, other than a mechanism specified under subd.
6 1. or 2., that is approved by the department.

7 (b) Obtains from the consumer, at the time of purchase, a statement signed by
8 the consumer that confirms all of the following:

9 1. The consumer's name, address, and birth date.

10 2. That the consumer understands that no person who is under 18 years of age
11 may purchase or possess cigarettes or falsely represent his or her age for the purpose
12 of receiving cigarettes, as provided under s. 254.92.

13 3. That the consumer understands that any person who, for the purpose of
14 obtaining credit, goods, or services, intentionally uses, attempts to use, or possesses
15 with intent to use, any personal identifying information or personal identification
16 document of an individual, including a deceased individual, without the
17 authorization or consent of the individual and by representing that he or she is the
18 individual, that he or she is acting with the authorization or consent of the
19 individual, or that the information or document belongs to him or her, is guilty of a
20 Class H felony, as provided under s. 943.201.

21 (4) Any person who makes a sale of cigarettes as the result of an advertisement
22 on the Internet shall, at the time of purchase, obtain the purchaser's electronic mail
23 address and shall receive payment for the sale by credit card, debit card, or check
24 prior to shipping.

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1 (5) The invoice for any shipment of cigarettes sold to consumers in this state
2 by direct marketing shall specify the name and address of the seller and any valid
3 permit issued under s. 139.34 that is held by the seller.

4 (6) All packages of cigarettes shipped to consumers in this state shall be clearly
5 labelled “CIGARETTES” on all sides of the outside of such packages.

6 (7) (a) No person may deliver a package of cigarettes sold by direct marketing
7 to a consumer in this state unless the person making the delivery receives a
8 government issued identification card from the person receiving the package and
9 verifies that the person receiving the package is at least 18 years of age. If the person
10 receiving the package is not the person to whom the package is addressed, the person
11 delivering the package shall have the person receiving the package sign a statement
12 that affirms that the person to whom the package is addressed is at least 18 years
13 of age.

14 (b) No person may deliver a package of cigarettes to a consumer in this state
15 unless the seller of the cigarettes provides proof to the person making the delivery
16 that the seller has complied with all requirements under this subchapter. A seller
17 shall have no course of action against any person who refuses to deliver cigarettes
18 as provided under this subdivision.

19 (8) This section does not apply to any retailer or wholesaler who sells cigarettes
20 to consumers in this state and who holds a valid seller’s permit under this subchapter
21 or subch. III of ch. 77.

22 **SECTION 23.** 139.35 (1) of the statutes is amended to read:

23 139.35 (1) TRANSFERS. No person may give, sell or lend any stamps to another
24 and no person may accept, purchase or borrow any stamps from another. All sales
25 and transfers of stamps may be made only by the secretary to permit holding

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SECTION 23

1 manufacturers and distributors, and to bonded direct marketers who are authorized
2 by the department to purchase and affix tax stamps.

3 **SECTION 24.** 139.38 (1) of the statutes is amended to read:

4 139.38 (1) Every manufacturer located out of the state shall keep records of all
5 sales of cigarettes shipped into this state. Every manufacturer located in the state
6 shall keep records of production, sales and withdrawals of cigarettes. Every
7 distributor and direct marketer shall keep records of purchases and sales of
8 cigarettes. Every manufacturer, bonded direct marketer, and distributor ~~holding a~~
9 ~~permit from the secretary with the right~~ who is authorized by the department to
10 purchase and apply stamps shall also keep records of purchases and disposition of
11 stamps. Every jobber, multiple retailer, and vending machine operator shall keep
12 records of all purchases and disposition of cigarettes. Every warehouse operator
13 shall keep records of receipts and withdrawals of cigarettes. All such records shall
14 be accurate and complete and be kept in a manner prescribed by the secretary. These
15 records shall be preserved on the premises described in the permit or license in such
16 a manner as to ensure permanency and accessibility for inspection at reasonable
17 hours by authorized personnel of the department.

18 **SECTION 25.** 139.38 (1m) of the statutes is created to read:

19 139.38 (1m) Records of purchases and sales of cigarettes under sub. (1) that
20 are kept by direct marketers shall indicate, for each shipment of cigarettes into this
21 state in the month preceding the report under sub. (2), the invoice date and number;
22 the quantity of cigarettes shipped; the brand name of the cigarettes shipped; the
23 manufacturer of the cigarettes shipped and the point of origin; the purchaser's name,
24 address, and birth date; the name of the person to whom the cigarettes were shipped;

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1 the address to which the cigarettes were shipped; and any other information the
2 department requires.

3 **SECTION 26.** 139.38 (2) of the statutes is amended to read:

4 139.38 (2) (a) Except as provided in par. (b), every permittee manufacturer,
5 distributor, jobber, and direct marketer shall render a true and correct invoice of
6 every sale of cigarettes ~~at wholesale~~ and every permittee shall on or before the 15th
7 day of each calendar month file a verified report of all cigarettes purchased, sold,
8 received, warehoused or withdrawn during the preceding calendar month.

9 (b) The department may allow any jobber, multiple retailer, nonbonded direct
10 marketer, or vending machine operator permittee who does not sell cigarettes, except
11 for those on which the tax under this chapter is paid, to file a quarterly report. The
12 quarterly report shall be filed on or before the 15th day of the next month following
13 the close of each calendar quarter. The report shall specify the number of cigarettes
14 purchased and sold during the preceding calendar quarter.

15 **SECTION 27.** 139.395 of the statutes is amended to read:

16 **139.395 Theft of tax moneys.** All cigarette tax moneys received by a
17 distributor, bonded direct marketer, or manufacturer for the sale of cigarettes on
18 which the tax under this subchapter has become due and has not been paid are trust
19 funds in the hands of the distributor, bonded direct marketer, or manufacturer and
20 are the property of this state. Any distributor, bonded direct marketer, or
21 manufacturer who fraudulently withholds, appropriates or otherwise uses cigarette
22 tax moneys that are the property of this state is guilty of theft under s. 943.20 (1),
23 whether or not the distributor, bonded direct marketer, or manufacturer has or
24 claims to have an interest in those moneys.

25 **SECTION 28.** 139.75 (12) of the statutes is amended to read:

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11-24

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SECTION 28

1 139.75 (12) “Tobacco products” means cigars; cheroots; stogies; periques;
2 granulated, plug cut, crimp cut, ready-rubbed and other smoking tobacco; snuff;
3 snuff flour; cavendish; plug and twist tobacco; fine cut and other chewing tobaccos;
4 shorts; refuse scraps, clippings, cuttings and sweepings of tobacco and other kinds
5 and forms of tobacco prepared in such manner as to be suitable for chewing or
6 smoking in a pipe or otherwise, or both for chewing and smoking; but “tobacco
7 products” does not include cigarettes, as defined under s. 139.30 ~~(1)~~ (1m).

8 **SECTION 29.** 254.911 (1) of the statutes is amended to read:

9 254.911 (1) “Cigarette” has the meaning given in s. 139.30 ~~(1)~~ (1m).

10 **SECTION 30.** 254.92 (2m) of the statutes is created to read:

11 254.92 (2m) No person may purchase cigarettes on behalf of, or to provide to,
12 any person who is under 18 years of age. Any person who violates this subsection
13 may be:

14 (a) Required to forfeit not more than \$500 if the person has not committed a
15 previous violation within 30 months of the violation.

16 (b) Fined not more than \$500 or imprisoned for not more than 30 days or both
17 if the person has committed a previous violation within 30 months of the violation.

18 (c) Fined not more than \$1,000 or imprisoned for not more than 90 days or both
19 if the person has committed 2 previous violations within 30 months of the violation.

20 (d) Fined not more than \$10,000 or imprisoned for not more than 9 months or
21 both if the person has committed 3 or more previous violations within 30 months of
22 the violation.

23 **SECTION 31.** 891.455 (4) of the statutes is amended to read:

24 891.455 (4) The presumption under sub. (2) for cancers caused by smoking or
25 tobacco product use shall not apply to any municipal fire fighter who smokes

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SECTION 31

1 cigarettes, as defined in s. 139.30 ~~(1)~~ (1m), or who uses a tobacco product, as defined
2 in s. 139.75 (12), after January 1, 2001.

3 (END)

1/12/3

Insert 2-1

sec. 100.20 (1n)

100.20 (1n)^(b) It is an unfair method of competition
or an unfair trade practice for any person to sell
cigarettes to consumers in this state in violation of

s. 139.345.

Insert 11-24

14/2/3

Section #. 139.45 of the statutes is amended to read:

139.45 Prosecutions by attorney general. Upon request by the secretary of revenue, the attorney general may represent this state or assist a district attorney in prosecuting any case arising under this subchapter.

History: 1985 a. 302.

the attorney general ^{may} take ^{any} action necessary
to enforce s. 139.345.

end of 11-24